



additional delay of more than one week after New Year's Eve. Even recognizing that some law offices may have closed New Year's Eve and most are closed on New Year's Day, there were more than five full business days before Plaintiffs filed their motion for leave. Plaintiffs failed to explain the additional delay during those 8 days and have not given this court good cause to grant leave.

## **II. PLAINTIFFS' DESIGNATION FAILS TO COMPLY WITH COURT'S ORDER OR RULE 26**

The Court should further deny the Motion for Leave because Plaintiffs' proposed expert designations fail to comply with the Scheduling Order or Rule 26 regarding disclosure of experts who do not provide written reports. Attached as Exhibit A to their Motion for Leave, Plaintiffs provided their Expert Witness Designation identifying three attorneys for the Plaintiffs as experts – Alfonso Kennard, Jr., Terrance Robinson, and Lakshmi Ramakrishnan. The Scheduling Order in this case requires that each opinion that the expert will present and the basis for each opinion be provided by the stated deadline. Doc. No. 17. Further, because they did not provide written reports of their opinions, these "experts" also fall within the purview of Rule 26(a)(2)(C). *See* Fed. R. Civ. Proc. 26(a)(2)(C). Plaintiffs are required to disclose both the subject matter on which the witness is expected to testify **AND** a summary of the facts and opinions to which the witness is expected to testify. *See id.* While the proposed disclosures arguably provide the subject matter under the first prong of the Rule, Plaintiffs entirely fail to satisfy the Court's order or Rule 26(a)(2)(C)'s second prong and provide a summary of the facts and opinions on which the witnesses will testify. There is no information in the disclosures regarding the Plaintiffs' alleged attorneys' fees to date, what the total expected attorneys' fees would be through trial both for these trial plaintiff and if a conditional class were certified, whether counsel has been hired on a contingency or hourly basis, and the contingency arrangement or the hourly rate at which

each attorney bills his or her time. Without the factual information and opinions of the witnesses, Defendants are prejudiced in designating expert witnesses to rebut such information and opinions. The Court should further deny the Motion for Leave as Plaintiffs have designated three redundant witnesses to testify on the same subject matter, presumably all with the same opinions.

### **III. PRAYER & REQUEST FOR ALTERNATIVE RELIEF**

Defendants oppose the Motion for Leave for the foregoing reasons and respectfully request that the Court enter an order denying the Motion. Attached is a Proposed Order denying the Motion for Leave.

But understanding that mistakes happen and that the Court may grant the motion for leave, Defendants alternatively request that the Court enter an order giving Plaintiff a deadline to file proper designations that satisfy Rule 26 and extend Defendants' current deadline to designate their experts until at least 30 days after Plaintiffs' proper designation. Attached is a Proposed Order granting the Motion, but ordering the Plaintiffs to file amended designations as to the three experts, and extending Defendants' Deadline under the current Scheduling Order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing instrument was served by ECF and facsimile to the following on this the 29<sup>th</sup> day of January, 2014:

Terrence Robinson  
Lakshmi Ramakrishnan  
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/s/ Konor Cormier  
Konor A. Cormier